IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.6389 of 2006

1. The Grampanchayat Nazare
and another ..Petitioners

vs.

1. Nagesh Narayan Sonawane
and others ..Respondents

Shri Machindra Patil for petitioners.
Shri V.A.Madone for respondent nos. 4 to 10

CORAM: S.C.DHARMADHIKARI J.
14th June, 2007

P.C.

1. Rule. Respondent Nos. 4 to 10 waive service. Respondent nos. 1 to 3 are already served. In any case they have already alienated the property in favour of respondent nos. 4 to 10. In such circumstances their presence is not necessary for the purpose of this petition.

2. By consent of both sides, rule made returnable forthwith.

3. The gram panchayat has filed Reg.Civil Suit against respondent nos. 1 to 3, being Reg.Civil Suit No.195 of 1995, for possession. During the pendency of the suit, it desired to bring on record the subsequent events namely execution of the sale deed by original defendant nos. 1

to 3 in favour of defendant nos. 4 to 10 being respondent nos. 4 to 10 herein. That application has been rejected by the impugned order and that is how the instant petition.

4. Shri Patil appearing for the petitioners states that in this case the gram panchayat would be greatly prejudiced if alienation during the pendency of the suit would entail in a separate suit being filed against the transferees. More so, when the suit is of 1995 and the amended Code of Civil Procedure does not apply to such a suit. The bar to amend the pleadings, if any, would not be attracted. Merely, because the trial has commenced, on account of delay, the application could not have been dismissed.

5. On the other hand, Shri Madane appearing for the contesting respondents submits that earlier application for amendment being dismissed there is nothing on record which would permit filing of a fresh application for the same relief. The trial having commenced, the present application is rightly rejected and no interference is called for with the impugned order.

6. In my view, it is doubtful as to whether the amended C.P.C. would preclude the petitioner Gram Panchayat from amending the plaint. While it is true that a public body

will be bound by the same rules of procedure, yet, in the instant case, when the original defendants have created rights in favour of defendant nos.4 to 10, then, merely because earlier application is rejected, it does not mean that the amendment should be disallowed. More so, when the defendant nos. 4 to 10 are already parties to the suit. In such circumstances, gram panchayat can very well seek relief of possession against them and merely because the amendment application is allowed, does not mean that merits of the matter have been gone into.

7. For the delay, if any, the parties can be compensated by payment of cost. Considering the liberal principles of amendment of pleadings, the Trial Court was in error in rejecting the application.

8. In the above circusmtances, Rule is made absolute in terms of prayer clauses (a) and (b). The petitioners/original plaintiffs are permitted to amend the plaint by incorporating para 9A therein within a period of four weeks from today, subject, however on payment of costs quantified at Rs.1500/- payable to respondent nos. 4 to 10/original defendant nos. 4 to 10. Costs be paid in the Trial Court. As far as payment of Court fee is concerned, the additional court fee be paid within a period of two weeks from today, if not paid earlier.

9. All concerned to act on authenticated copy of this order.

(S.C.DHARMADHIKARI J.)